

2023-1891

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

**HMTX INDUSTRIES, LLC, HALSTEAD NEW ENGLAND CORP.,
METROFLOR CORPORATION, JASCO PRODUCTS COMPANY LLC,**

Plaintiffs-Appellants,

v.

**UNITED STATES, OFFICE OF THE UNITED STATES TRADE
PRERESENTATIVE, KATHERINE TAI, U.S. TRADE
REPRESENTATIVE, UNITED STATES CUSTOMS AND BORDER
PROTECTION, TROY MILLER, ACTING COMMISSIONER OF U.S.
CUSTOMS AND BORDER PROTECTION,**

Defendants-Appellees,

Appeal from the United States Court of International Trade in
No. 1:20-CV-0177-3jp, Chief Judge Mark A. Barnett, Judge Claire R. Kelly, Judge
Jennifer Choe-Groves

**DEFENDANTS-APPELLEES' UNOPPOSED
MOTION FOR EXTENSION OF TIME**

Pursuant to Rule 26(b) of the Federal Circuit rules, defendants-appellees, the United States, *et al.*, respectfully request an extension of time of 60 days, to and including October 27, 2023, for the Government to file its principal brief. Our principal brief is currently due on August 28, 2023. This is our first request for an extension of time for this purpose.

On August 10, 2023, undersigned counsel contacted Pratik Shah and Matthew Nicely, counsel for plaintiffs-appellants, and Mr. Shah stated that the plaintiffs-appellants do not oppose this motion.

This request for an additional 60 days within which to file the Government's principal brief is necessary for a number of reasons. As an initial matter, additional time is required because this appeal is a test case or master case for over 4,100 similar actions, and preparing a response requires consultation with multiple federal agencies and different components within the Department of Justice. The requested extension is necessary to allow undersigned counsel to confer and coordinate with interested agencies and to obtain necessary internal supervisory review.

In addition, appellants filed their opening brief on July 17, 2023, and four amicus briefs were filed shortly thereafter. Thus, the Government must respond to five briefs.

This request is also necessary because, due to the press of business in other matters, we anticipate that we will not be able to complete our brief by the August 28, 2023 due date. On July 31, 2023, undersigned counsel for the Government filed the Government's principal brief in *Eric Katz v. Department of Justice*, No. 22-1473, a matter pending in this Court. In addition, although we are aware that deadlines in matters pending before other courts are not necessarily a basis for

obtaining an extension before this Court, undersigned counsel has a reply brief to the Government's motion for judgment on the administrative record due on August 14, 2023, and oral argument on August 24, 2023, in *GOVCIO, LLC, et al., v. United States*, Consol. No. 23-906C, a consolidated bid protest, that is proceeding on an expedited basis in the United States Court of Federal Claims.

For these reasons, we respectfully request that the Court grant this request for a 60-day extension of time, to and including October 27, 2023, for the United States to file its principal brief.

Respectfully submitted,

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PATRICIA M. MCCARTHY
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/s/ L. Misha Preheim
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August 14, 2023

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DECLARATION OF ELIZABETH SPECK

In support of Defendants-Appellees' Motion for Extension of Time,
defendants-appellees' counsel, Elizabeth Anne Speck, declares, pursuant to 28
U.S.C. § 1746, as follows:

1. I am the primary attorney assigned to this appeal for the United States.
2. I am working with counsel from various agencies to respond to the
opening brief filed by plaintiffs-appellants HMTX Industries, *et al.*

3. On August 10, 2023, I contacted Pratik Shah and Matthew Nicely, counsel for the plaintiffs-appellants, to obtain their position on this motion and Mr. Shah stated that plaintiffs-appellants do not oppose this motion.

4. This request for an additional 60 days within which to file the Government's principal brief is necessary because, due to the press of business in other matters, I anticipate that I will not be able to complete the Government's principal brief by the August 28, 2023 due date. Plaintiffs-Appellants filed their principal brief on July 17, 2023 and four additional amicus briefs were filed shortly thereafter. On July 31, 2023, I filed the Government's principal brief in *Eric Katz v. Department of Justice*, No. 22-1473 a matter pending in this Court.

5. In addition, although I am aware that deadlines regarding matters pending before other courts are not necessarily a basis for obtaining an extension before this Court, I have a reply brief to the Government's motion for judgment on the administrative record due on August 14, 2023, and oral argument on August 24, 2023, in *GOVCIO, LLC, et al., v. United States*, Consol. No. 23-906C, a consolidated bid protest that is proceeding on an expedited basis in the United States Court of Federal Claims.

6. Also, additional time is required because this case is a test case or master case for over 4,100 similar actions and preparing a response requires consultation with multiple federal agencies and different components within the

Department of Justice. The requested extension is necessary to allow counsel to confer and coordinate with interested agencies and to obtain necessary internal supervisory review.

DECLARATION

I certify that the foregoing is true and correct to the best of my knowledge and belief.

/s/ Elizabeth Anne Speck
ELIZABETH ANNE SPECK

Executed: August 14, 2023

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7) and Federal Circuit Rule 32(b), the undersigned certifies that the word processing software used to prepare this motion indicates there are a total of 388 words, excluding the portions identified in the rules. The motion complies with the typeface requirements and type style requirements of Fed. R. App. P. 32(a)(5) and has been prepared using Times New Roman 14 point font, proportionally spaced typeface.

/s/ Elizabeth Anne Speck
ELIZABETH ANNE SPECK